

February 18, 2025



Ms. Kia Middleton-Murphy
Director of Special Education
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, MD 20850

Re: [REDACTED]
Reference: #25-196

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report on the final results of the investigation.

ALLEGATIONS:

On December 20, 2024, MSDE received a complaint from [REDACTED], hereafter, "the complainant," on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public School System (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related requirements concerning the above-referenced student.

MSDE investigated the following allegations:

1. The MCPS did not follow proper procedures when identifying and evaluating the student to determine if she is a student with a disability requiring special education and related services, since December 2023, in accordance with 34 CFR §§ 300.301-311 and COMAR 13A.05.01.06.
2. The MCPS has not developed an Individualized Education Program (IEP) that addresses the student's identified academic needs since January 2024, in accordance with 34 CFR § 300.324.
3. The MCPS did not provide prior written notice (PWN) of the IEP team's decision on November 18, 2024, in accordance with 34 CFR § 300.503.
4. The MCPS did not follow proper procedures in responding to a request for amendment of the PWN made on November 18, 2024, in accordance with 34 CFR §§ 300.618 - .620.
5. The MCPS has not ensured access to the educational record in response to a request since November 2024, in accordance with 34 CFR § 300.613.

BACKGROUND:

The student is nine years old and is a student with Autism under the IDEA. She attends [REDACTED]. The IEP team is in the process of developing the student's initial IEP.

ALLEGATIONS #1 and #2

**PROPER PROCEDURES FOR IDENTIFYING A STUDENT WITH A
DISABILITY and DEVELOP IEP THAT ADDRESSES THE STUDENT'S
ACADEMIC NEEDS**

FINDINGS OF FACT:

1. The notice and consent for assessment, developed on November 27, 2023, reflects the IEP team proposed and agreed to evaluate the student and complete assessments in the following area:
 - Academic Performance- reading, mathematics, and written language
 - Functional/Adaptive Performance
 - Emotional/Social/Behavior Development
 - Observation
2. The PWN developed January 24, 2024, reflects the student qualifies for special education services with the disability category of Autism.
3. The PWN generated on February 2, 2024, in response to the IEP team meeting on January 24, 2024, reflects the IEP team convened to develop the initial IEP. The PWN reflects the team proposed and agreed to defer the following decisions to a continuation meeting: Supplementary Aids and Services, ESY Discussion, Review of Goals, Recommended Service, and Least Restrictive Environment. The PWN reflects the IEP team proposed and agreed to reconvene on March 1, 2024.
4. The IEP team required continuation meetings to develop the initial IEP. The IEP team met on 11 occasions between February 20 to November 18, 2024. The PWN dated May 1, 2024, reflects the IEP team met on April 23 and 29, 2024, and proposed the initial IEP to the complainant.
5. There is no documentation that the complainant has provided written consent to implement the proposed IEP.

DISCUSSION AND CONCLUSION:

An initial IEP must be developed within 30 days of the determination by the IEP team of the student's eligibility for special education services. 34 CFR § 300.323(c).

In this case, the IEP team determined the student was eligible for special education services on January 24, 2024, and did not develop an IEP within 30 days. The MCPS completed the initial IEP on April 29, 2024. To date, the complainant has not consented to implement initial services.

Based on Findings of Fact #1 through #3, MSDE finds the MCPS developed an IEP that addresses the student's identified academic and behavioral needs. However, it was not developed within the required timelines since February 2024, in accordance with 34 CFR §§ 300.101, .323, and .324. Therefore, MSDE finds a violation.

Notwithstanding the violation, based on Finding of Fact #5, MSDE finds that the parent did not provide consent for the initiation of services. Therefore, no student-specific corrective action is required.

ALLEGATIONS #3 and #4

**PROVISION OF PRIOR WRITTEN NOTICE and PROPER
PROCEDURES WHEN AMENDING AN IEP**

FINDINGS OF FACT:

6. The PWN developed on November 18, 2024, reflects the IEP team proposed and agreed to add the following:
- Assistive Technology Section: MCPS will offer the student a choice between using paper and pencil or a Chromebook for assignments.
 - Testing and Classroom Accommodations: MCPS will add Notes and Outlines and Monitor Test Responses as accommodations.
 - Present Levels in the IEP: Fall 2024 MAP data will be included for Reading Comprehension and Math.

The PWN reflects the IEP team rejected the following:

- The complainant requested to change the eligibility date or provide a narrative to provide context to the date. The PWN reflects "Parents signed the Authorization for Assessment on November 29, 2023, after requesting an evaluation on July 31, 2023."
- The complainant requested math problem solving and reading comprehension as areas that require IEP goals and objectives. The school-based team rejected this proposal because the student is performing at or above grade level without accommodation. The team noted that the student is "flagged for rapid guessing on MAP assessments."
- The complainant requested specific testing for dyscalculia. The school-based team rejected this proposal. The student scored high in math calculations but lower in math facts fluency. Given her successful performance without support, no formal assessment for a learning disability was agreed upon.

The PWN further reflects the MCPS:

- Agreed to attach the complainant's emails and written PWNs to the student's file to document concerns about assessment permission date and academic goals request; and
 - Rejected the complainant's proposal to write the PWN with the school team. The MCPS informed the complainant that it is their responsibility to issue the notice.
7. On December 19, 2024, the complainant emailed the IEP team a proposal of ten items that were not documented in the PWN developed following that IEP team meeting on November 18, 2024. The email reflects the complainant requested that the MCPS address the following items in the PWN:
- evaluation for dyscalculia
 - identify the sources of the test scores
 - produce the folder for review
 - develop multiple academic goals and ensure that the goals are ambitious
 - insert 11 data points from the fall state assessment
 - insert MAP report and email in the student's IDEA confidential folder
 - insert parent specific language to the initial evaluation data section of the IEP
 - add services from a behavior specialist to reduce distractions to self
 - add instruction and modeling to support use of graphic organizers and the use of additional organizational tools.

The email further reflects the complainant requested:

- That the MCPS respond to the request to amend PWN prior to the next IEP team meeting
- That the MCPS address areas identified errors in the draft IEP
- For an Independent Educational Evaluation (IEE)

The complainant's narrative reflects that the request for access to the student's file, has not yet been provided.

8. On February 14, 2025, MCPS responded to the complainant's request, which was made on December 19, 2024, to amend the PWN developed on November 18, 2024.

CONCLUSIONS:

Prior Written Notice

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. This notice includes a description of the action proposed or refused, an explanation of the action, a description of each evaluation procedure, assessment, record, or report used as a basis for the decision, a statement that the parents of a student with a disability have protection under the procedural safeguards and the means by which a copy of the description of the safeguards can be obtained, sources for parents to contact to obtain assistance in the understanding the provisions, a description of other options that the IEP team considered and the reasons why those options were rejected, and a description of other factors that are relevant to the agency's proposal or refusal 34 CFR § 300.503.

There is no requirement to provide the parent of a student with a disability with a verbatim transcript of discussions that occur at the IEP team meeting. Additionally, as explained in the *Analysis of Comments and Changes* to the IDEA, there is nothing that would prohibit the public agency from using the IEP document as part of the prior written notice so long as it has all of the required content (Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46691).

In this case, the complainant alleges that the PWN generated following an IEP team meeting on November 18, 2024, was not accurate. It did not capture the complete discussion to include all parental input and all items that the IEP team rejected.

Based on Findings of Fact #6 through #8, MSDE finds that the MCPS provided PWN of the IEP team's decisions from the IEP team meeting held on November 18, 2024, in accordance with 34 CFR § 300.503. Therefore, MSDE does not find a violation.

Amendment of Prior Written Notice

Based on Findings of Fact #7 and #8, MSDE finds that the MCPS did follow proper procedures in responding to a request for amendment of the PWN developed on November 18, 2024, in accordance with 34 CFR §§ 300.618 -.620. Therefore, MSDE does not find a violation.

ALLEGATION #5

RESPONSE TO REQUEST FOR RECORDS

FINDINGS OF FACT:

9. There is documentation that the complainant requested access to the student's records in writing on February 21, 2024.
10. On March 6, 2024, the complainant emailed the MCPS informing them that access to the student's records has not been provided.
11. On March 13, 2024, the MCPS emailed the complainant informing him that "A large envelope containing all the documents in [Student's] Confidential File is in the main office. Would you like to pick it up this afternoon when you pick [Student] up from clubs or would you like me to have her place it in her backpack?"

On March 21, 2024, the complaint emailed the MCPS sharing that the records were received.

CONCLUSION:

Based on Findings of Fact #9 through #11, MSDE finds that the MCPS has ensured access to the educational record in response to a request made on February 21, 2024, in accordance with 34 CFR § 300. 613. Therefore, MSDE does not find a violation.

TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR § 300.152). Accordingly, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable timeframes below to ensure that noncompliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it completes the required actions consistent with MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party seeks technical assistance, they should contact Ms. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.² Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

¹The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

² MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason why the documentation was not made available during the investigation. Requests for reconsideration must be sent to Tracy Givens, Section Chief, Dispute Resolution Branch, at Tracy.Givens@maryland.gov. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

The parties maintain the right to request mediation or to file a due process complaint if they disagree with the identification, evaluation, placement, or provision of a free appropriate public education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Antoine L. Hickman, Ed.D.
Assistant State Superintendent
Division of Early Intervention and Special Education Services

ALH/ra

c: Dr. Thomas Taylor, Superintendent, MCPS
Dr. Peggy Pugh, Chief Academic Officer, MCPS
Diana K. Wyles, Associate Superintendent, Office of Special Education, MCPS
Gerald Loiacono, Supervisor, Resolution and Compliance Unit, MCPS
[REDACTED], Principal, [REDACTED], MCPS
Dr. Paige Bradford, Section Chief, Specialized Instruction, MSDE
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
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Tracy Givens, Section Chief, Dispute Resolution, MSDE
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